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File No. O. Indus Relations
Legal Department / 49
A. Branch



Subject: Opinion under the
Ranney Industrial Relations
Act 1946

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O. Indus. Relations / 49

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C O N T E N T S.

Legal Department File No. O. Industrial Relations/49.

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L.D. R.I. No. 3397. dt. 7.3.49.

Submitted.

Pl. see R.L.A's. Opinion No. 2407 dated 1.3.49.

Labour Deptt. states that the only provisions in the Bom. Industrial Relations Act, 1946, for alteration of standing orders are secs. 38 and 39 and both these apply in the case of standing orders settled under sec. 35(2) only; neither these sections nor any other section provide for alteration of standing orders settled under the Bom. Industrial Disputes Act, which continue in operation under clause (b) of section 122. That Deptt. therefore wants to know how the standing orders settled under the repealed Act can be altered. Secy. Labour Deptt. is of the view that under sec. 122(b) the existing standing orders shall be deemed to have been settled under the Bom. Industrial Relations Act, i.e. under sec. 35(2) and therefore secs. 38 and 39 would apply. The R.L.A. is requested to advise in the matter.

*seen and returned
The view taken by the secy. Lab. Deptt. is correct.*

Sd/- R.L.A. P.M.Lal
9/3

U.R. to Labour Deptt. No. 2742 d. 10.3.1949.

Office of the R.L.A.

The Bombay Industrial Disputes Act, 1938, is repealed by section 122 of the Bombay Industrial Relations Act, 1946, Clause (b) of section 122 provides that any standing order settled under the provisions of the Bombay Industrial Disputes Act, 1938, so repealed shall be deemed to have been settled, by the appropriate authority under the corresponding provisions of this Act. For all purposes the standing orders for any Industry settled under the Bombay Industrial Disputes Act, 1938, now repealed are standing orders under the present Act for that Industry. There is no provision in the Act for substitution of the existing standing orders. The existing standing orders will determine the relations between the employer and employees until they are altered under the provisions of the Act.

Sd/- P.M.Lal.

Remembrancer of Legal Affairs.

U.R. to Labour Department No. 2407 dated the 15th
March, 1949.

Office of the R.L.A.

Summons by the
Court of Enquiry.

Bombay Industrial
Relations Act, 1946.

Sections 100, 118
and 119.

The Court of Enquiry is constituted under section 100 of the Bombay Industrial Relations Act, 1946, and though its procedure is neither prescribed in the Act or the Rules, power is given to it under section 118 to summon witnesses for evidence and for production of documents. Further section 119 provides that inter alia, a member of the Industrial Court or a Court of Enquiry and a member of the staff of any of the said Courts shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. In view of these provisions it is clear that the Court of Enquiry can summon a person to give evidence before it or to produce necessary documents and non-compliance with such summons would be an offence under section 174, Indian Penal Code.

A draft summons on the lines of the drafts appearing on pages 644 and 661 of the Booklet is appended.

Sd/- R.T.K.

For- Remembrancer of Legal Affairs.

U.R. to the Office of the Court of Enquiry
(through the Labour Department), No. 4177,
dated the 18th April.

Office of the R.J.A.

Under section 42 of the Bombay Industrial Relation Act, 1946, any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees.

Under section 30 the representative of employees in this particular case is the person selected by the employees in accordance with section 28. Under Rule 41 of the Bombay Industrial Relations Rules, 1947, subject to the provisions of sub-section (4) of section 28- i.e., subject to the elected persons being recalled the persons elected under Rule 40 shall function as the representative of employees until such time as fresh elections are held by the Labour Officer and the names of the persons so elected are communicated by him to the employer concerned. Sub-section (5) of section 28 requires that vacancies in the number of persons elected under sub-section (1) shall be filled by election in the prescribed manner, i.e., in accordance with Rule 40. There is nothing in the Act or in the Rules to suggest that, if there be any vacancy in the number of persons elected under sub-section (1) of section 28, the remaining persons are not to be treated as representative particularly for the purposes of section 42. Vacancies may be caused either by recall or in any other manner and it does not appear to be the intention of the Act that notices of change should not be served upon the representatives

until the vacancy is filled up by an election in the prescribed manner. Such intention cannot be gathered from the provisions of section 29 which only contemplates that the act or decision of the majority of the persons elected shall prevail. In the present case the provisions of section 29 can be complied with as, making allowance for the vacancy, sufficient number of persons remain who can take a decision by a majority.

34/- P.M.Lal.

Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 2698 dated the 9th March 1941

Office of the R.L.A.

Question whether
conciliation
proceedings may
be started
before expiry of
the agreement.

Bombay Industrial
Relations Act,
1946- sections 42,
42, 55, 64 (a)(iii)
and 116(1).

The Khandesh Spinning & Weaving Mills entered into an agreement on 27th November 1947 according to which the number of permanent posts of reelers to be ultimately retained in the mill was fixed at 36, and it was decided not to fill up the vacancies caused by resignation, death, etc., till that number was attained. As the agreement contained no provision as to its duration, the mills gave two months' notice of termination of the agreement on 27th December 1948 under section 116 of the Bombay Industrial Relations Act with the result that the agreement expired on 27th February 1949. However, before the expiration of that agreement, that is to say, on 19th January 1949, the management gave a notice of change asking for the introduction of pali system in the Reeling Department and sent the N form notice on 28th January 1949. The question raised for R.L.A.'s consideration is whether the notice of change and N form issued during the two months after the termination notice was given are valid, and if so, whether the conciliation proceedings can be commenced.

2. Section 64(a)(iii) of the Bombay Industrial Relations Act, 1946, provides that no conciliation proceeding in respect of an industrial connection.....

dispute shall be commenced if by reason of a direction issued under sub-section (2) of section 114 the employer and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award. A registered agreement can be terminated as provided in section 116(1). It is clear from these provisions that until an agreement is properly terminated after due notice, no conciliation proceeding in respect of an industrial dispute shall be commenced. Section 55 provides that on receipt of the statement of the case under section 54 the conciliator shall, ~~except~~ in a case in which by reason of the provisions of section 64 a conciliation proceeding cannot be commenced, forthwith enter the industrial dispute in the register kept for the purpose and thereupon the conciliation proceeding shall be deemed to have commenced from the date of such receipt. It is apparent from this provision that a conciliatory proceeding shall be deemed to commence with the entry made in the register of industrial disputes, and that such entry is not to be made forthwith even on receipt of the statement of the case under section 54, if such conciliation cannot be commenced by reason of the provisions of section 64. Reading section 55 with section 64 it appears clear that so long as the agreement is not terminated, that is to say, it is alive by reason of section 64, no entry connection-.....

of the industrial dispute shall be made in the register even on receipt of the statement under section 54. Section 43 which provides for giving a notice of change, and section 54(1) read with rule 62 which provides for giving a notice in Form N, are in no way restricted in their operation by reason of the agreement under section 114. Consequently, pending the termination of the agreement, there would be no legal objection to giving a notice of change under section 43, and a notice in Form N under section 54. After these proceedings are taken the real bar arises under section 55 which prevents the commencement of the proceedings by entry in the Register of Industrial Disputes so long as the agreement has not been terminated. Consequently, the notice of change given under section 43 and the notice given in Form N under section 54(1) are valid. The conciliator could not forthwith enter the dispute in the register and commence the conciliation proceedings until the expiry of the agreement. Since the agreement has now expired, there would be no legal objection to the conciliator now entering the dispute in the register and proceeding with the conciliation proceedings.

Sd/- P.M.Lal.
 Rememberancer of Legal Affairs.

U.R. to Labour Deptt. No. 2989 dated the 17th
 March 1943.

Office of the R.L.A.

Question whether
conciliation
proceedings
may be started
before expiry
of agreement.
Bombay Industrial
Relations
Act, 1947
sections
64(a)(iii),
114(2) & 116.

R.L.A.'s opinion No.2989, dated 17th March 1949 proceeded on the assumption that the settlement was one falling under section 114(2) of the Bombay Industrial Relations Act, and consequently section 64(a)(iii) was applicable. But it now transpires that it was a registered settlement falling under section 114(1). It is true that section 64 does not provide a bar against conciliation proceedings in respect of an industrial matter if there is a registered settlement falling under section 114(1). But even in the absence of such a provision it appears that in accordance with the general principle of law so long as a settlement is operative it would not be possible for parties to such settlement to dispute it or to have any matter relating to it adjudicated. On this general principle it appears that unless and until a registered settlement, which is binding under section 114(1) is duly terminated under section 116, it would not be legally feasible to commence conciliation proceedings. However, to put matters beyond any pale of doubt, section 64(a)(iii) may be amended as proposed by Secretary, Labour Department.

2. As regards the second question, the view taken by the Labour Department that no conciliation proceedings can be commenced under section

unless and until the agreement or settlement is actually
terminated under section 116(1) or (3) of the Act is correct.

Sd/- P.M.Lal
Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 5639 dated the 20th Ma
1949.

Question whether provisions of the Bombay Industrial Relations Act, are applicable to Banking Companies.

Bombay Industrial Relations Act, 1946.

Section 2(4).

Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949.

Office of the R. L. A.

In view of the provisions of section 4 of the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949, the Secretary, Labour Department, observed:-

"Indeed, even for standing orders, etc. the class of banks that fall under the Central sphere will cease to be under the Bombay Industrial Relations Act. For there can be

no recourse to Labour Courts about standing orders, now would standing orders be determinative. Standing orders for such banks would have to be settled under the Industrial Employments (Standing Orders) Act. It would

be best if we issue necessary notification excluding this class of banks from the Bombay Industrial relations Act. Labour Officers or elected representatives would have no functions surviving to them in respect of such banks, and it is well that this is made clear by exclusion of the banks from the Bombay Industrial Relations Act."

The R.L.A. is requested to advise.

In view of section 4 of the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949, the disputes between the Banks of the class falling under this Ordinance and their employees could no longer be referred for adjudication, inquiry or settlement under the Bombay Industrial Relations Act, 1946. It is true that section 4 only prohibits references from being made by the Provincial Government or any authority or officer subordinate to it and does not affect action in that behalf which can be taken by the parties themselves; nor are the correction....

other provisions of the Bombay Industrial Relations Act excluded. However, the whole scheme of the Bombay Industrial Relations Act, 1946, is intended to settle the industrial disputes and when the power of the Provincial Government to refer such disputes for adjudication or settlement are excluded, the other provisions which are more or less ancillary for the purpose of regulating the relations between the employers and the employees, would no longer be of much practical use. Further, the standing orders which are settled under Chapter VII and are determinative of the relations between the employer and his employees, cannot be utilised for the purpose because the dispute in respect of such standing orders which could have been referred for adjudication under section 73 can, in view of the Ordinance, no longer be so referred for adjudication by the Provincial Government. The Industrial Employment (Standing Orders) Act applies to industrial establishments as defined in section 2(e) which definition does not include banks. That Act would not be applicable to establishments maintained by banks and cannot be availed of for the purpose of settling standing orders determining the relations between the banks and their employees. However, as stated above the really vital provisions of the

Bombay Industrial Relations Act, are no longer applicable to the banks of the class falling under the Ordinance. What is left unaffected by the Ordinance would not seem to be of much consequence. In these circumstances, the course suggested by Secretary, Labour Department seems proper.

However, the Labour Department may scrutinise the various provisions of the Bombay Industrial Relations Act, with a view to see whether, as contemplated by sub-section (4) of section 2 only certain provisions of the Act should continue to be applicable to the banks in question.

Sd/- P.M.Lal
Remembrancer of Legal Affairs.

U.R. to Labour Deptt., No. 6195, dated the 3rd

Office of the R. L. A.

Question whether
in view of the
Federal Court's
judgment in
W. I. A. A.
case the demand VII
in the award made
binding can be
reopened.

Industrial Disputes
Act, 1947.

Sections 10(1),
19(3) Proviso.

Demand No. VII in the Annexure "A" to
Political and Services Department Order No.
2230/46 dated 29.12.1947, issued under section
10(1) of the Industrial Disputes Act, 1947,
referring the industrial dispute between the
Metro Theatre Bombay Ltd., and the workmen
employed for adjudication to the Industrial
Tribunal was withdrawn by the Union in view of
Mr. Justice Coyajee's judgment in the W. I. A.
Case. The Federal Court in the appeal prefer-
red by the W. I. A. A. challenging the judgment
of a Division Bench of the Bombay High Court
has held that the expression "industrial dispute"
as defined in clause (k) of section 2 of the
Industrial Disputes Act, 1947 (XIV of 1947)
included within its ambit a dispute in regard to
reinstatement of dismissed employees. This
decision cannot be deemed to be material change
in the circumstances on which the award was
based because it was open to the workmen to
proceed with the hearing of this demand and
get a decision of the Tribunal as in the case
of the Firestone Tyre and Rubber & Co., of
India Ltd., and its employee referred to in
R.L.A.'s opinion No. 37, dated 3.1.1949, in
which case the award could have been opened up
the proviso to sub-section (3) of section 19.
There would however, be no legal objection to

treating it as a new dispute and referring it to
adjudication under section 10.

Sd/- P.M.Lal.

Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 6662, dated the 16th J^y
1949.

Office of the R.L.A.

Question whether the Sangh can now act as a representative of employees under sec.30 and if it does not act whether other agencies can act.

Bombay Industrial
Relations Act, 1946.
Sec. 30.

It appears that an industrial dispute has arisen between the employees of 31 mills and their representative managements. The elected representatives of the employees sent notices in Form L from 3rd May to 9th May 1949. Since there was no agreement between the parties, the representatives of the employees have reported the dispute in H Form to the authorities under the Bombay Industrial Relations Act, 1946, on the 16th and 17th May 1949. The Secretary of the Mill Mazdoor Sabha has requested that the change asked for by the employees in the 31 mills should be applied to all the mills in Bombay by a notification under section 43(1) of the Act. It appears that in the meantime Rashtriya Mill Mazdoor Sangh is registered as a representative union for cotton textile industry in Bombay city and it is feared that the Rashtriya Mill Mazdoor Sangh may discontinue the conciliation proceedings and give fresh notices of fresh demands in view of the fact that the changes proposed by the representatives of the 31 mills were sponsored by the Mill Mazdoor Sabha. The question raised for the R.L.A.'s consideration is whether the Rashtriya Mill Mazdoor Sangh can now act as a representative of the employees under section 30 of the connection...

by Industrial Relations Act, 1946, and if it did not choose so to act, whether the other agencies mentioned in section 30 can act.

2. Under section 30 of the Bombay Industrial Relations Act, 1946, the following shall be entitled to act in the order of preference specified as the representative of employees in an industry in any local area:

- (i) a representative union for such industry;
- (ii) a qualified or primary union of which the majority of employees directly affected by the change concerned are members;
- (iii) any qualified or primary union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned;
- (iv) the Labour Officer if authorised by the employees concerned;
- (v) a person elected by the employees in accordance with the provisions of section 28 or where the proviso to sub-section (1) thereof applies, the employees themselves;
- (vi) The Labour Officer.

This provision is an enabling provision describing the order of preference which the agencies mentioned therein are entitled to act. Consequently the Rashtriya Mill Mandoor Sangh, which is now a representative union, would be entitled to preference and can act for the employees if it so desires, in which case the other agencies would not be able to claim to act for the employees. If, however, the Rashtriya Mill Mandoor Sangh elects not to act for the employees, the other agencies mentioned in section

30 would in the order of preference be entitled
to act for the employees.

Sd/- P.M.Lal
Remembrancer of Legal Affairs.

U.R. to Labour Department No. 376-conf: dated 22nd Jun
1940

Office of the R.L.A.

This would be a case of stoppage of work as defined in clause (35A) of section 3 of the Bombay Industrial Relations Act, 1946, and not of a strike as defined in that Act. Section 97A provides that a stoppage shall be illegal if it is commenced or continued with the object of compelling the provincial Government or any public servant to take or abstain from taking any particular course of action in regard to an industrial matter where the Provincial Government is not an employer in the industry concerned. Even though the payment of bonus may be an industrial matter, the object of the threatened stoppage is to compel not the Provincial Government but the Central Government to withdraw the Ordinance. Under clause (43a) of section 3 of the General Clauses Act "Provincial Government" as respects anything done or to be done after the establishment of the Dominion of India shall mean in a Governor's Province the Governor. "Central Government" is defined in the clause (8ab) of section 3 of the same Act to mean Provincial Government only in relation to functions entrusted under sub-section (1) of section 124 of the Government of India Act. Since no such functions are entrusted under the Ordinance, it would not be possible to hold that the Provincial Government is said to be compelled by the threatened strike. The Central Government would not be included

within the term "public servant;" nor would it be legally feasible to argue that any public servant, such as, a postal official is being compelled by the threatened strike. The view taken by the Labour Department is correct.

Sd/- P.M.Lal
Remembrancer of Legal Affairs.

H.R. to Labour Deptt. No. 7407. dated 4th July 1942.

Office of the R.L.A.

Appointment of
Conciliator
retrospectively
Bombay Industrial
Relations Act,
1946.
Section 6(2).

"Conciliator" as defined by clause (11) of section 3 of Bombay Industrial Relations Act, 1946 means any Conciliator appointed under this Act and includes the Chief Conciliator or a Special Conciliator. Sub-section (1) of section 6 provides that the Provincial Government shall appoint a person to be the Chief Conciliator. His jurisdiction shall extend throughout the Province. Sub-section (2) provides that the provincial Government may, by notification in the official gazettee, appoint any person to be a Conciliator for any industry in a local area specified in the notification. It is clear from these provisions that appointment of a Conciliator is a statutory appointment and a Conciliator can be appointed only prospectively under sub-section (2) of section 6 of the Act. By Labour Department Notification No. 1237/46, dated the 15th February 1949, Mr. B.N. Datar was appointed as Conciliator in place of Mr. Kani for the local area of the City of Bombay and Bombay Suburban District. But since Mr. Datar was appointed as Conciliator in place of Mr. Kani without limiting the appointment to Mr. Kani's leave period he continued to be a conciliator till Mr. Kani was actually appointed as Conciliator by Notification No. 248/48 dated the 28th June 1949.

The appointment of a Conciliator under sub-section (2) of section 6 being a statutory appointment it is not possible to give retrospective effect i.e. effect from 15th June 1949, to the notification appointing Mr. Kani as Conciliator. (See R.L.A.'s opinion No. 2440 dated 2-4-47 overruling R.L.A.'s opinion No. 6150 dated 19-11-1934). The same principle may be followed while making other appointments also.

Sd/- P.N.Lal
Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 7599, dated the 8th
July 1949.

Office of the R.L.A.

The question raised for the R.L.A.'s consideration is whether the words "a registered trade union" occurring in clause (1) of Standing Order 21 settled by the Industrial Court under sub-section (6) of section 26 of the Bombay Industrial Disputes Act, 1939, means a trade union registered under the Bombay Industrial Relations Act, 1946, or a trade union registered under the Trade Unions Act, 1926.

2. The orders in question have been continued in operation under clause (b) of the proviso to section 122 of the Bombay Industrial Relations Act, 1946. It is no doubt true that under section 20 of the Bombay General Clauses Act, 1904, expressions used in the Order shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power. However, in this case, the expression "registered trade union" has not been defined in the Bombay Industrial Relations Act, 1946, nor was it defined in the Bombay Industrial Disputes Act, 1939. On the other hand, the expression "registered trade union" has in terms been defined in the Trade Unions Act, 1926, to mean a trade union registered under that Act. Secondly, the context of the Bombay Industrial Relations Act, 1946, itself makes it clear that it would be permissible to collect subscriptions for unions which may not be registered unions as connection....

known to that Act. The scheme of the Act shows that an approved union need not necessarily be a registered union. Section 25 of the Act provides that the officers and members of an approved union as may be authorised by or under the rules made in this behalf by the Provincial Government shall have a right and shall be permitted by the employer concerned to collect sums payable by members to the union on the premises where wages are paid to them. Rule 29 of the Bombay Industrial Relations Rules, 1947, accordingly says that the President, etc., of an approved union shall, subject to certain conditions, be entitled to collect sums payable by its members on the premises of an undertaking where wages are paid to them. Since the Standing Order in question defines what would amount to a misconduct, it must always be construed strictly in favour of the subject. On principle there is no reason to feel that collection of subscriptions for a union which is validly registered under the Trade Unions Act can amount to misconduct or would require the further sanction of the manager. For the purpose of the status of a union, registration under the Trade Unions Act is more material than registration under the Bombay Industrial Relations Act, 1946, which is for the special purpose of representation in adjudication.

Having regard to all these reasons, courts would not be inclined to construe the expression "a registered trade union" occurring in clause (1) of the Standing Order 21 to mean a registered union under the Bombay Industrial Disputes Act, 1946, but would give it the wider and natural meaning to cover a union registered under the Trade Unions Act, 1926.

Sd/- P.M.Lal
Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 8218 dated the 20th July,
1949.

Office of the R.L.A.

Bombay Industrial
Relations Act 1946
Sec. 25(a).Rule 29.

The collection of subscription by
a person whether a member or a non-
member of a Trade Union registered under
the Trade Unions Act would amount to
misconduct, if he has not been authorised
by such union to collect the subscription,
and for that misconduct he can be
dismissed.

24/- P.M.Lal
Remembrancer of Legal Affairs.

U.R. to Labour Department. No. 9155 dated 12th
August 1949.

Office of the R.L.A.

Question whether pending proceedings can be continued even if Banking Companies are excluded from the Bombay Industrial Relations Act, 1946.

The question raised for the R.L.A.'s consideration is whether the pending proceedings can be continued even if the Banking Companies are excluded from the scope of the Bombay Industrial Relations Act, 1946. The Bombay Industrial Disputes Act, 1938, was applied to the Banking Companies sometime in 1946. By section 2, sub-section (3), of the Bombay Industrial Relations Act, 1946, that Act was made applicable to all the industries to which the Bombay Industrial Disputes Act, 1938, was applied. Consequently, the Bombay Industrial Relations Act, 1946, was deemed to be applied to the Banking Companies immediately after the Act came into force and it was not by a notification issued under section 2 sub-section (4) that the Act was applied to these companies. It is true that under the Proviso (a) to section 122 notifications whereby the Bombay Industrial Disputes Act was applied to the Industries have been saved and are deemed to have been issued under the Bombay Industrial Relations Act. But since the Act has been applied to the Banking Companies by virtue of section 2, sub-section (3), and not by a notification issued under section 2, sub-section (4), cancellation of the notification issued under the Bombay Industrial Disputes Act in respect of the Banking Companies would not have the effect of excluding these companies from the scope of the Bombay Industrial Relations Act, 1946. If these companies are to be excluded from

the purview of the Bombay Industrial Relations Act that Act will have to be amended suitably for the purpose; and while amending the Act steps should be taken to insert a provision in the amending Act saving the pending proceedings.

Idem D.S.

Remembrancer of Legal Affairs.

U.R. to Lab. Deptt. No.8962 dated the 9th

August 1949.